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SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
MONICA RAEVEN LINKER, (a/k/a  
“Michael Noah Belford”),  
Defendant.

No. 4:19-cr-06002-SAB

**ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS COUNT  
TWO OF THE INDICTMENT**

Before the Court is Defendant’s Motion to Dismiss Count Two of the Indictment, ECF No. 58. Count Two of the Superseding Indictment charges Defendant with Distribution of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), (b)(1). ECF No. 33. The Government alleges Defendant engaged in distribution of child pornography when an undercover FBI agent downloaded child pornography from Defendant’s shared folder using peer-to-peer file-sharing software. Defendant contends the Government’s theory fails, as a matter of law, because criminal liability attaches only when the FBI agent downloads the alleged child pornography. Defendant argues a Government agent’s actions cannot complete an offense that a defendant has yet to commit. The Court disagrees.

**ORDER DENYING DEFENDANT’S MOTION TO DISMISS COUNT  
TWO OF THE INDICTMENT ^ 1**

1 The Ninth Circuit Court of Appeals has held that “evidence is sufficient to  
2 support a conviction for distribution [of child pornography] when it shows that the  
3 defendant maintained child pornography in a shared folder, knew that doing so  
4 would allow others to download it, and another person actually downloaded it.”  
5 *United States v. Budziak*, 697 F.3d 1105, 1109 (9th Cir. 2012). “ ‘[E]vidence of a  
6 deliberate, affirmative action of delivery’ is not required to sustain a conviction for  
7 distribution of child pornography.” *United States v. Vallegos*, 742 F.3d 902, 907  
8 (9th Cir. 2014) (quoting *Budziak*, 697 F.3d at 1108-09). In this case, the  
9 Government’s theory appears sufficient to support a conviction for distribution of  
10 child pornography. For that reason, Defendant’s motion is denied.

**Accordingly, IT IS HEREBY ORDERED:**

12        1. Defendant's Motion to Dismiss Count Two of the Indictment, ECF No.  
13 58, is **DENIED**.

14       **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
15 this Order and provide copies to counsel.

**DATED** this 29th day of August 2019.



Stanley A. Sestan

Stanley A. Bastian  
United States District Judge

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS COUNT  
TWO OF THE INDICTMENT ^ 2**